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U P D A T E

News of Developments in the Financial Sector and Related Areas

* *IN THIS ISSUE* *

Consolidation in Banking

The banking industry continues to consolidate throughout the United States, but at a much slower pace than in the past two decades and in particular since 2007. Consolidation occurs from a number of factors with banks experiencing loan and securities portfolio problems resulting in inadequate capital on one hand and the pricing of banks in acquisition transactions on the other hand. The Federal Deposit Insurance Corporation ("FDIC") reports that the number of insured institutions has declined over 41% since 1992.

In some cases, depressed stock prices for publically traded financial institutions is a factor in the decline in merger and acquisition activity because there is less buying power by an acquirer with the result that a healthy institution is unwilling to accept a lower price. Probably the most significant factor in the decline is the closure of banks by the FDIC resulting in acquirers for banks purchasing the assets of the closed bank at a modest premium of the deposits, and the FDIC entering into a loss-sharing agreement with the acquirer on potential loan and asset losses. Because of FDIC closure of banks and the utilization of loss-sharing agreements, acquirers have in some cases either excluded or escrowed problem assets in making an acquisition of a healthy bank thereby leaving the risk of collection of the problem assets with the shareholders of the acquired institution. This is sometimes referred to as the *good bank bad bank* with the shareholders of the selling bank retaining certain of the nonperforming assets.

The pricing number of bank transactions has continued to decline since 2006 when the average reflected a price/book multiple of 2.36 and price/earnings ratio of 27.87. In 2007 the average reflected a price/book multiple of 2.20 and a price/earnings ratio of 22.65.

The year 2012 reflected a higher number of bank transactions of 236 compared to 178 transactions that were announced during 2011. The average price to tangible book was 114.86% during 2012 for the 139 transactions with disclosed terms compared to 106.42% during 2011 for the 101 transactions with disclosed terms and 115.38% during 2010 for the 121 transactions with disclosed terms. Although there are still acquirers for banks, they are much more selective in the acquisitions that are being made.

Prior to 2007 there had not been a bank failure since the second quarter of 2004. During 2007 there were three bank failures with the largest being NetBank located in Georgia with approximately $2.5 billion in assets and $2.3 billion in total deposits. During 2008 there were twenty-five bank failures with the largest being Washington Mutual Bank located in Washington with approximately $307 billion in assets and $188 billion in deposits. During 2009 there were one-hundred forty bank failures with the largest being Colonial Bank located in Alabama with approximately $25 billion in assets and $20 billion in deposits. During 2010, there were one-hundred fifty-seven bank failures with the largest being AmTrust Bank located in Ohio with approximately $12 billion in assets and $8 billion in deposits. During 2011, there were ninety bank failures with the largest being Superior Bank located in Alabama with approximately $3 billion in assets and $2.7 billion in deposits.

During 2012, there were 51 bank failures with the largest being Tennessee Commerce Bank located in Tennessee with approximately $1.19 in assets and $1.16 in deposits. During the first two months of this year, it is noteworthy that there have only been three bank failures, each of which had assets of less than $100 million.

In its Fourth Quarter 2012 Banking Profile Report, the Federal Deposit Insurance Corporation reports good news on the improving trend in the banking sector. Sixty percent of all institutions reported improvements in their quarterly net income from the previous year. The number of institutions on the FDIC's problem list fell from 694 to 651 during the fourth quarter.

During the recent financial crisis, the number of problem banks reached a high of 888 at the end of the first quarter of 2011. Problem banks are characterized as those institutions having a risk of failing and being closed by the FDIC. The close of 2012 marked the second year in a row that there were no new bank charters. Probably one of the biggest issues facing banks during the coming year will be the ability to raise capital, not only for acquisitions, but for credit quality issues relating to loan portfolios and securities portfolios.

Our firm is experienced and available to answer questions regarding the raising and placement of capital and matters relating to merger and acquisition transactions.

Subordination (SNDA) Agreements

Subordination, nondisturbance and attornment agreements are often referred to as *SNDA agreements.* They are generally utilized in connection with real estate leases when there is a mortgage by the landlord to a lender. SNDA agreements provide protection for the lender in that the lessee agrees to subordinate its interest to the lender=s mortgage and in the event of foreclosure by the lender of its mortgage, the lessee agrees to attorn to the new owner and recognize the new owner as the landlord under the lease. SNDA agreements also provide protection for the lessee in that the lease will continue in the event of a foreclosure and a new owner, and the lessee=s use of the premises will not be disturbed or impaired as a result of lessee subordinating its interest under the lease to the mortgage of the lender. For the benefit of the lender, the SNDA agreement will provide that the lease will be subject and subordinate to the mortgage, the lien imposed by the mortgage and all advances under the mortgage. For the benefit of the lessee, the SNDA agreement will provide that a new owner will not terminate or disturb the lessee=s possession of the premises under the lease except in accordance with the terms of the lease, and the new owner will be bound to the lessee under the terms and conditions of the lease. SNDA agreements should also provide that in the event of a default under the lease by the landlord, that the lessee will provide notice to the lender in order to provide the lender an opportunity to cure the default by the landlord. SNDA agreements provide important protections to both a lender and to a lessee and should be utilized in the lease of premises subject to a mortgage.

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